

Naofragio

International Newsletter for Subsea Treasure Salvors

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Naofragio Newsletter is a specialized business periodical dedicated to the undersea treasure recovery activity — Researching wreck locations, studying history, setting up diving operations, recovering coins and artifacts, working with investors, studying legal issues, coordinating with government agencies and building marketing skills.



A clump of silver 8 real and 4 real coins from the wreck of the *Mercedes*.

Curse of the Black Swan: How the Law of Salvage Perpetuates Indeterminate Ownership of Shipwrecks

A summary of the 2007 article by Jennifer Tsai

Staff editor for the International Law Review Association SMU Dedman School of Law

Naufragio introduction: There are lots of laws relating to treasure recovery — here are just six. We all now know that the Kingdom of Spain won a complicated case against Odyssey Marine Explorations just a few years ago. At the first glance it appeared that Odyssey was keeping information secret unfairly. But secrets are needed to protect finds. This summary of an excellent study shows us just how complex the legal part of the treasure salvage business can be. GB

Admiralty Law

The U.S. federal courts have the authority to handle all Cases of Admiralty and Maritime Jurisdiction.

The law of finds

Under the law of finds, the first finder to lawfully take actual possession or control of the shipwreck acquires title to it. A salvor who is the first finder of a shipwreck must: (1) Show intent to acquire the property and take actual possession or control of it; and (2) establish that the property has been abandoned. Thus, the application of the law of finds requires a determination that the shipwreck has been abandoned by the previous owner.

The law of salvage

Under this law, the salvor of imperiled property on navigable waters gains a right of compensation but not outright title, which is retained by the original owner. The elements of a claim are: (1) there must be a marine peril; (2) the salvage service must be voluntarily rendered when not required by an existing duty or by special contract; and (3) the salvage efforts must be at least partly successful. There are two proceedings: a grant of exclusive salvor-in-possession status for who first discovers the vessel and the grant of an award once property is actually possessed. (This law seems to rarely apply to treasure salvage.)

The 1902 Treaty of Friendship & General Relations Between the United States and Spain

The wreck is a ship formerly commissioned by Spain, and Spain won on this point. Odyssey could not prove that Spain had abandoned the vessel.

UNESCO Convention on the Protection of the Underwater Cultural Heritage This 2001 ruling protects all underwater traces of human existence that are more than 100 years old.

The Sunken Military Craft Act of 2004, a U.S. federal act, protects any vessel that was on a military mission, allowing the originating country to claim their ship even centuries later.

The edited article by Jennifer Tsai:

"The law of salvage has traditionally determined the ownership of discovered shipwrecks. Because it grants possessory status to the first party that discovers the shipwreck pending a final determination of ownership, it offers an advantage over the law of finds by avoiding the potentially destructive effects of open conflict in the seas among competing claimants. In preserving the rights of the salvor as first finder, salvage law jurisprudence grants possessory status to the salvor without requiring positive identification of the vessel and a liberal salvage award for the salvor should an owner with superior claim be found.

This article explains how salvage law jurisprudence can present challenges in the ascertainment of identity and ownership in the discovery of an unidentified ship known as the Black Swan, in which a sovereign's prospective claim of ownership can be hindered by salvage law's interest in protecting the rights of the salvor.

"In May of 2007, a U.S. commercial salvage company announced that it had salvaged \$500 million worth* of colonial-era gold and silver coins from a shipwreck found in international waters of the Atlantic.' The company that found the shipwreck, Odyssey Marine Explorations (Odyssey), claims that it has been unable to identify the origins of the sunken vessel and has taken to calling the shipwreck the "Black Swan." Citing concerns about attracting would-be looters to the site of the vessel, Odyssey has been apprehensive in divulging more details on its find.³ Nonetheless, Odyssey's secrecy has done little to discourage the efforts of the Kingdom of Spain, who believes the discovered shipwreck to be the remains of a thirty-six gun Spanish frigate that sank two hundred years ago, the *Nuestra Señora de las Mercedes* and is convinced that Odyssey knows more than what it has publicly stated. On May 30, 2007, Spain filed suit in a U.S. district court — and later won this case.

* EDITOR'S NOTE: That amount was grossly inflated according to several Hispanic coin pros. It was based on each of the quite common 8 real coins dating about 1802-1805 retailing for \$500 each. Not a chance they would sell for more than \$100 each in pristine condition, which most would not be.

At issue in the case surrounding the ownership of the Black Swan is Odyssey's apparent inability to identify the vessel in the face of Spain's contentions that Odyssey is being too evasive. Specifically, Odyssey has stated in its admiralty action that nothing thus far recovered in its

salvage efforts appears to indicate that any third party would have a superior claim. Spain was convinced that Odyssey is concealing crucial information.

The court agreed, finding that a responsive pleading by Alabama without any basis to assess the validity of its claim would necessarily be "speculative and conditional," severely hindering Alabama's efforts to actively pursue its claim of ownership. The court held that although Fathom might not have known the name of the vessel or vessels, it surely had the precise location as well as enough data after months of research to conclude whether the shipwreck was embedded in the ocean floor.

If the shipwreck was not originally a Spanish vessel, Spain cannot assert ownership on any alternative grounds, as the shipwreck, according to Odyssey, lies in international waters beyond the limits of any sovereign to exercise its territorial jurisdiction to lay claim to the vessel. Odyssey, therefore, has an interest in divulging as little information as possible so as to hinder Spain's ability to investigate its claim and frame a responsive pleading

Requiring positive identification before commencing legal action would strip exclusive salvage rights of the protection they provide in granting the salvor the benefits of being the first to discover and salvage a shipwreck, as salvors would have to contend against a "feeding frenzy of competing salvors and claimants swarming around a shipwreck site," risking damage to the vessel as well as the archaeological and historical value of the site.

When exclusive salvage rights can be granted without requiring positive identification of the vessel, it encourages new discoveries by salvors via ensuring the salvor will derive a benefit from its labor as well as allowing the exercise of salvage rights free from conflicts with competing salvors. On the other hand, the law of finds is premised on fair competition whereby the find is freely available to the entire world before it is reduced to actual possession. Granting preliminary exclusive salvage rights chills this competition in preventing the conditions that the law of finds requires by restricting the availability of the vessel to other claimants.

In the case of the Black Swan, because Spain's ownership remains indeterminate, the knowledge of an ownership claim and a likely refusal of salvage cannot be imputed to Odyssey. As there is no owner for Odyssey to force upon unwanted salvage, Odyssey is able to take advantage of an opportunity to conduct more extensive salvage efforts without the risk of being denied a salvage award. This could spur Odyssey to concentrate on its salvage operations at the expense of efforts at gathering more information to identify the vessel, maintaining the cloud of uncertainty surrounding ownership of the vessel and further hindering Spain's ability to investigate or assert a claim of ownership.

The cumulative effect of admiralty law in cases where an unidentified shipwreck is found in international waters is that the salvor receives a two-fold benefit as first-finder with preliminary exclusive salvage rights. First, because the sovereign's interest is subject to the vessel's origin and identity, the salvor can exercise control over the vessel for the time being while the sovereign, as a potential owner, can only speculate on the validity of its claims and is hindered in pursuing decisive legal action. Also, the nature of salvage law in permitting salvage awards while ownership remains inconclusive encourages the salvor to focus its efforts on salvage rather than efforts to identify the vessel, exacerbating the sovereign's difficulties in pursuing a legal claim.

"There is something in a treasure that fastens upon a man's mind. He will pray and blaspheme and still persevere, and will curse the day he ever heard of it, and will let his last hour come upon him unawares, still believing that he missed it only by a foot."

Joseph Conrad in *Nostromo*

Lot 520  Potosi, Bolivia, cob 8 reales, 1758q, NGC VF 25. S-P54; KM-40; CT-375. 25.60 grams. Super crude and chunky... Watch this Lot Price realized: 170 USD	Lot 521  Potosi, Bolivia, cob 8 reales, 1765(V-Y). S-P57; KM-45; CT-952. 26.78 grams. Chunky but high grade (XF), with full date... Watch this Lot Price realized: 135 USD	Lot 522  Potosi, Bolivia, cob 8 reales, 1766V-Y. S-P57; KM-45; CT-953. 26.93 grams. Chunky and crude but with two full dates... Watch this Lot Price realized: 142 USD
Lot 523  Potosi, Bolivia, cob 8 reales, 1768V-(Y). S-P57; KM-45; CT-955. 27.03 grams. Bold full date within full... Watch this Lot Price realized: 180 USD	Lot 524  Potosi, Bolivia, cob 8 reales, 1771/0(V-Y). S-P57; KM-45; CT-961. 26.56 grams. Scarce overdate below cross only, the... Watch this Lot Price realized: 200 USD	Lot 525  Potosi, Bolivia, cob 8 reales, 1772V-Y. S-P57; KM-45; CT-963. 27.04 grams. Typically chunky (and with typical... Watch this Lot Price realized: 190 USD

Thanks to Daniel Frank Sedwick, LLC Winter Park, Florida

What should we be paying for 8 reales cobs?

Here is a section of a Segwick auction report which shows you both the opening bid required and the final price paid. These coins come from the Potosí mint (now part of Bolivia) and would have been the most common of such coins of the time. These coins, all bought for under \$200 are great examples of cobs without paying for a rare type or worse, someone's idea that coming from a 1715 Fleet wreck makes them worth ten times as much. These reasonably priced pieces make great jewelry pieces once carefully mounted in silver or gold.

 Atocha Re-creation Coin Pendant 2 Reales Single Prong in 14K Gold Mount \$475.00	 Atocha Re-creation Coin Pendant 1 Reale Single Prong in 14K Gold Mount \$429.00	 Atocha Re-creation Coin Pendant 8 Reales Single Prong in 14K Gold Mount \$699.00	 Taffi Fisher Collection 1 Reale Atocha Re-creation Silver Coin, Single Prong, Cross Side \$175.00
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With authentic coins so affordable why would anyone want to buy fake coins from the company that first brought real coins to the surface? These nasty overpriced little pieces of pot metal (the company does not tell you what they are made of) are given a gold mount and sold for as much as a real coin would cost. This is the Mel Fisher company's new idea of smart marketing?. A bit of free advice: Stop that! You are messing up the market for future discoveries from the oceans.

Naofragio Subscription Details: This newsletter consists of 20 issues per year, with no less than eight pages per issue. We will keep sending you newsletters for a while. Meanwhile, just keep reading — and write us back, too! Satisfaction is guaranteed or you pay nothing.
Naofragio means shipwreck in Spanish. Segovia.gary@Yahoo.com

Going to invest with a treasure salvor?

Look at all the words you will need to think about —

Here is some legal CYA text from a treasure website investment offer: All statements, other than statements of historical fact included herein are ‘forward-looking statements,’ including any other statements of non-historical information. These forward-looking statements are subject to significant known and unknown risks and uncertainties and are often identified by the use of forward-looking terminology such as “guidance,” “projects,” “may,” “could,” “would,” “should,” “believes,” “expects,” “anticipates,” “estimates,” “intends,” “plans,” “ultimately” or similar expressions.

We all know there are risks and that we are willing to take them. Yet when lawyers step in (and they must) we stare hazards in the face. Investing in treasure salvor work is a long shot but we can’t resist. And we never gamble more than we are willing to lose.

Biography: Ellsworth Boyd

Our first profile introduces a man who needs no introduction to well-read divers. Here is his life and career greatly summarized for this small publication. GB

As a youngster I was always fascinated by the undersea world. I read books and watched films that portrayed exciting underwater adventures. I even wrote a short story about deep-sea diving when I was in high school. I became a lifeguard in Ocean City, Maryland. It was here that I met Jim Kelly and Lucky Jordan, two seasoned veterans who were professional lifeguards. They told stories about diving and bagging fish and lobster for dinner. They also explored some shipwrecks. I was hooked. When I graduated from Washington College, where I was editor of the school newspaper. Then I was drafted into the U.S. Army and trained to be a combat medic.

I contacted Jim and Lucky who invited me to join them in Ft. Lauderdale for snorkeling or “skin diving” as we called it, on the well stocked coral reefs.

Fellow lifeguard John Barbera was one of the few divers who owned a scuba tank and he offered to take me to a shallow reef and “teach me the ropes.” From that moment on I knew the underwater world was destined to play a major role in my future. I continued to dive with Jim and Lucky and another buddy, the late Bob Allen. Bob became one of the greatest lobster divers in Florida.

Lobstering and spearfishing were okay, but I was interested in capturing the underwater world on film and writing about my adventures. Thus my first camera was a Brownie in a Plexiglas housing. Later I graduated to a Rolleiflex camera in a larger plexiglas housing and eventually the Nikonos camera and Ikelite strobe setup.

One of my earliest of hundreds of articles and photos published in Skin Diver Magazine was of the Sapona, a WWI freighter shipwreck in Bimini, Bahama Islands.



Ellsworth Boyd on the beach with a favorite 8 reales coin.

My articles and photos appeared in every major dive publication, most of which have gone out of print. Even *Skin Diver*, one of the oldest, ceased publication in 2001 after 51 years in print. Of the many articles I wrote for *Skin Diver*, some stand out: features on the historic shipwrecks *Titanic*, *Monitor* and *Debraak*; *Graveyard of the Atlantic*; *The East Coast's Top Ten Wrecks* and many of the best dive sites in the Caribbean.

In addition to features in *Skin Diver*, some might remember my monthly shipwreck column, "Wreck Facts," where I answered questions about divers' favorite shipwrecks. My column was in *Skin Diver* for six years and then appeared in *Underwater USA*, Clive Cussler's *NUMA News*, *Northeast Dive News* and *Sport Diver Magazine*. It had a 20 year run and was heralded by many readers.

When online writing continued to grow, my Wreck Facts column became a blog called *Wreckchat*, which appeared for nearly three years. It covered shipwreck updates, discoveries, legislation and historical disasters.

In *Rodale's Scuba Diving Magazine*, my features included Clive Cussler's discovery of the Civil War submarine *Hunley*. Clive became a friend and I was able to help him in his research about the bones of ancient Peking Man, a theme in one of his adventure thrillers.

I published over 70 articles in *Underwater USA*, including an interview with *Playboy Playmate of the Month* Kym Herrin (March, 1981) who is an avid diver; and other interviews with football star Gale Sayers, Chef Tell Erhardt, and Mendel Petersen — a renowned artifacts curator at Smithsonian Institute. There were other articles on Aquaculture; Protecting Sea Lions; Conserving Sea Urchins; the Establishment of a Walrus Sanctuary; an expose on Divers Using Cyanide to Net Tropical Fish; Exposure to Hazardous Wastes; and features on the shipwrecks *Dixie Arrow*, *Proteus* and *Water Witch*. A humorous article, *The Ten Worst Diving Habits*, drew smiles from readers.

Scuba Times liked my articles on Bahamian Shipwrecks; Bonaire's Mystery Ship; the 1715 Spanish Treasure Fleet; and Diving in the French West Indies. The editor featured four of my photos on his front cover.

Along the way, there were other magazines that published some of my ongoing interests: education, travel, biographies, adventure and general human interest. A few that stand out in my mind are: Our Navy Magazine that used more than 50 of my articles

Other magazines with my byline: Guideposts, Writer's Digest, Caribbean Travel & Life, Adam, Cigar Aficionada, Oceans Magazine, Alaska Magazine, Men's Adventure, Sea Classics, Sunrise, The Leatherneck, Maine Coast Fisherman, American Mercury, The FEA Journal, Progressive Teacher, Teacher Magazine, National Education Association Journal, Scholastic Magazine, The Instructor, Christian Science Monitor, The Christian Athlete, Sportswoman, Black Sports, Fishing Gazette, National Star Chronicle, Pool News, Law & Order, Police Times, Florida Boater, The Compass, Vacations Unlimited, Yachts & Yachting, True Treasure, Eastern & Western Treasures, Treasure Found, Sports Digest, Better Camping, Wilderness Camping, Maryland Conservationist, All Outdoors, Animal Cavalcade, Pet Parade, Fiesta, Yankee, Rockies Magazine, The Islander, Grit, Flair, Jax Fax, Carolina Sportsman, Preakness Special, Blood Horse, National Racquetball, Gems and Minerals, Flying Colors, Air New England, Dallas Cowboys Weekly, Pace, Florida Keys, Outdoor Traveler, Home & Away, Collect America, Americas, Meridian, Skylite, Sunshine, Dog Fancy, Chartering, Fast Lane, Inside Chicago, American History Illustrated, Top Shelf, Outdoors in Maryland, Outdoor Traveler, Real People, Femme Fatales, Valley Times, College Bound, Jet Sport, Casual Living and Maryland Magazine.

In over 50 years I've written 1,500 articles for 110 different magazines. Approximately 70% of them were about diving. Overall highlights include interviews with Clive Cussler, Hugh Downs, Gale Sayers, Bert Jones, Bettie Page, Mel Fisher, Teddy Tucker, Dr. Richard Mudd, grandson of Dr. Samuel Mudd who set the leg of John Wilkes Booth, Capt. Carl Fisser and some of the unsung linemen from the Baltimore Colts. I rubbed elbows with Jacques and Jean Michel Cousteau and Hans Hass. I sat in a makeup chair next to Gary Moore for To Tell the Truth and met panelists Peggy Cass, Bill Cullen and Kitty Carisle.

I was a featured speaker at many diver conventions and clubs. I was honored to be the featured speaker at the Clive Cussler Collectors Society 8th annual gathering in Scottsdale, Arizona, in 2012. My topic: "Always Another Shipwreck." I began writing a monthly column about shipwrecks for Clive and Dirk Cussler's website: numa.net.

In 2012, I was inducted into the International Legends of Diving, honored for my writing that has informed divers and helped them research and discover their favorite shipwrecks. I appear on: legendsofdivng.com. I explored the Tres Puentes, a Florida Treasure galleon from the 1733 Spanish Plate Fleet; and dove the shipwrecks of St. Pierre, Martinique.

I'm a retired Professor Emeritus, Towson University, Towson, Maryland, and I live in White Hall, Maryland, a suburb of Baltimore. My two lovely daughters, Alison and Emily, have been a joy to raise and travel with. They've always been supportive, as has my wonderful wife, Cathy. She remains my topnotch proofreader and has saved many editors a lot of headaches over the years. I always considered writing an avocation that started with my underwater experiences and branched out to other fields. I never made a lot of money writing, but I went on some extraordinary all-expenses paid trips to tropical paradises. Someday I'll write a book about my experiences, but for now this much too long dissertation will have to suffice.

Best regards and Safe Diving!

***Money: If you were supposed to hang on to it,
it would have handles on it.***

Somebody's Dad

The Sound of Silver

An article written by your editor as a college kid for a local coin club — in 1965!

Hispanic people have valued silver coins for centuries and part of the pleasure of owning those pieces has been hearing their sound as they strike another object. We collectors say: Ouch. Keep in mind that this article was written when .900 fine silver coins were still in circulation.

While the actual banging of a coin on a metal surface is no longer done by serious collectors, there is still a lot of fondling of pieces. In Madrid I recently watched a prospective buyer of a \$200 almost uncirculated coin. He rubbed his fingers across the piece, feeling its relief, flipping it over repeatedly, caressing every detail of surface and rim. The dealer did not seem at all concerned. I wanted to slap the fellow depositing his skin oils and acids onto the coin.

In September, 1965 I wrote an article called “The Joyous Sound of Silver.” Here is that article, edited for correct gender use (Not ‘he’ but they, etc.) Good grief boy, women collect coins too. The article was written after I had enjoyed several adventures into the Hispanic world: Mexico, Peru, Panama and Costa Rica.

In collectors’ search for coins in foreign lands, they will encounter many activities and customs that differ from those in their own country. One of the unusual coin-handling customs that intrigued me also explains some of the *golpes* (dents or dings) on many a Spanish American coin.

People of the Americas use a third sense in handling coins that is seldom done by *norteamericanos*. The Latin Americans, not content with examining coins just by sight and touch, derive additional satisfaction from hearing the sound of the coin — almost always a silver one. Their purpose in making a coin ring is not simply amusement. The ring of a coin can confirm or disprove the practiced ear whether the piece is unquestionably genuine and of the proper metal. The chime of a coin thus becomes an audible guarantee of the quality of the piece. For the Latin American, a mere tap of the side of the coin seldom suffices, The custom seems to require dropping the coin from a distance of at least a foot onto a solid, hard surface — concrete paving or a marble bar countertop being considered ideal.

The visiting U.S. collector watches in silent horror as a non-collecting Hispanic flings a scarce pillar dollar clanging onto the floor. “Listen,” the pleased coin owner will say with a contented smile. “It is good silver, no?”

Upon regaining his composure, the collector must agree. The metal used in Spanish American coinage was, indeed, excellent silver. Very few coins were less than .900 fine and many of the early cob-type pieces were .930 fine silver. For centuries, the content of silver *reales* equaled in worth the face value of the coins.

(2021 comment: I think more accurately it would have been the silver value was just under the face value of the coins. GB)

After the revolution of 1810-1821, the purity and weight of the silver was stamped on the coins of the newly independent nations of the Americas. Assurance of good silver in proper quantities was necessary to the people of those times. It was this very attitude — this integrity they demanded of their coins — that made the *reales* so acceptable in the trade with Asia and Africa.

Even today, many Latin Americans are interested in the fineness of the coins shown to them. Upon encountering a silver coin, it is quite natural for them to add to the visual and tactile examination the test of sound. While the coin proves itself true, it gains a new dent or abrasion. It is evident that this desire to hear the singing of silver has become as casually habitual as the squeezing of avocados in the market. Most of us must have been guilty of this or similar offences as we tested the quality of an item.

I painfully witnessed an example of this custom at my expense when I requested some recently struck silver medals at a Mexican bank. The teller came up with five beautiful uncirculated specimens. Reaching over a three-foot high partition, he dropped them ringing onto the marble counter. The sinking feeling in my solar plexus might well have prompted him to ask if the demonstration were necessary. But the brilliant smile and look of pride in the eyes of the *pagador* seemed to say what he was too polite to put into words: "You hear that? The Mexico City mint still turns out fine silver. There is something especially beautiful about the ring of a piece which is new and unhandled, don't you think?" I bought the pieces for just slightly more than their silver value and I hoped that the departing smile I mustered was not too phony.

The true collectors in Spanish America, like you and I, would not be guilty of such coin-damaging actions. But even today Latino collectors cannot always resist the temptation of clink a few low-value silver coins together from time to time. They respect the history and numismatic value of piece and have pride in their collections. But beware of the non-collecting man on the street. He loves the sound of silver and may not see what harm can come from a dent on a coin.

To prevent possible damage to future coin acquisitions before they leave those carefree, non-collector hands, you might want to ask the owner not to drop the pieces. An even surer method to appease the natural instincts of Latinos is used by Ed Beals.* On his coin hunting trip into Mexico, he carries a special 8 *reales* 'throwing piece' of little value. When inquiring about coins, he shows this 'ringer' to the person as an example of what he is looking for. The Mexican gives that piece a swift drop to the floor, thus satisfying his urge to hear the silver ring — and no valuable coins were damaging during the expedition.

In the minds of Spanish Americans, high quality silver has no substitute as a coin metal. And who can blame them for their single-minded pride in this matter? A fine silver coin will always please the eye, hand, and the ear of its owner. Surely as pleasant a noise as there is in numismatics is the joyous sound of silver.

* Ed Beals (1915-2000) was my father — and for the record, I got him interested in coin collecting, not the other way around!



Thanks for your interest in the Naufragio Newsletter. See you next issue.
We invite your thoughts via e-mail! What news and comments can you share with us?
Please send us an e-mail whenever you find something of interest.
Wishing you well — Gary Beals

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